



May 12, 2000

Mr. Bernardo J. Garcia
Sr. Assistant County Attorney
County of Harris
1019 Congress, 15th Floor
Houston, Texas 77002

OR2000-1868

Dear Mr. Garcia:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 136232

The Harris County Sheriff received a request for information relating to the requestor's arrest. You indicate that the sheriff has released information responsive to portions of the request and has no records responsive to other portions. You seek to withhold, under sections 552.103, 552.108, and 552.117 of the Government Code, information responsive to the part of the request seeking "a copy of any inventory of money taken from the person of the requestor" and the "names, rank, position, Social Security Numbers" and other identifying information for officers involved in the arrest and detention.

Section 552.108 excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

You seek to withhold under section 552.108 the information responsive to the part of the request seeking "a copy of any inventory of money taken from the person of the requestor."

You advise that the investigation and prosecution of the case to which these records relate are pending. Based on your representations, we conclude that you may generally withhold, under section 552.108(a)(1), the information you submitted as Exhibit B-6.

Please note, however, that section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). The sheriff must release these types of information in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See also Open Records Decision No. 127 (1976) (summarizing what is "basic information" under the *Chronicle* case).

Section 552.103(a) excepts from required public disclosure information

relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party[.]

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, (Tex. App.--Austin 1997, no pet.); Open Records Decision No. 588 (1991).

You seek to withhold, under section 552.103(a), the information responsive to the parts of the request seeking the "names, rank, position, Social Security Numbers" and other identifying information for officers involved in the arrest and detention. You advise that there is a pending prosecution of the requestor to which these materials relate.

We note first that the names of "arresting" and "investigating" officers are considered "basic information" which may not be withheld under section 552.108 of the act. See discussion of section 552.108, *supra*. Basic information may not generally be withheld under section 552.103 either. See Open Records Decision No. 597 (1991). Accordingly, the names of such arresting and investigating officers, to the extent they are responsive to the request, must be released as "basic information." Otherwise, based on your representations, and having reviewed the records at issue, we conclude that you may generally withhold under section 552.103 the information you submitted as Exhibit B-7.

Please note that, absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). To the extent the defendant has seen or had access to these records, there would be no justification for now withholding such information from him pursuant to section 552.103(a). Similarly, section 552.103(a) does not authorize withholding materials which have already

been made available to the public. Open Records Decision No. 436 (1986). The applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982), Open Records Decision No. 350 (1982). In view of this disposition, we do not address your section 552.117 claim with respect to social security numbers included in Exhibit B-7.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

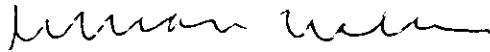
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

¹We note that section 552.022(a)(2) provides that "the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body" "are not excepted from required disclosure under [the act] unless they are expressly confidential under other law." We do not believe, however, that section 552.022(a)(2) was intended to operate so as to require release of employees' or officers' names, etc., in response to a request seeking to identify individuals who meet another stated condition, such as, here, officers who were present at the arrest or internment of the requestor.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "William Walker".

William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 136232

Encl. Submitted documents

cc: Mr. Donald Bergeron
4314 Kacee Drive
Houston, Texas 77084
(w/o enclosures)